United Nations S/2005/442

Security Council

Distr.: General
7 July 2005

Original: English

Letter dated 5 July 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 9 August 2004 (S/2004/663). The Counter-Terrorism Committee has received the attached fourth report from Nepal submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

05-41634 (E) 030805

Annex

Letter dated 5 July 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Nepal to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to forward herewith the fourth report prepared by His Majesty's Government of Nepal in pursuance of paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Arjun Bahadur **Thapa**
Chargé d'affaires a.i.
Minister Plenipotentiary
Deputy Permanent Representative

Enclosure

Fourth report by Nepal on the implementation of Security Council resolution 1373 (2001)

1. Implementation measures

Effectiveness in the protection of the financial system

1.1. **The CTC notes that Nepal, in its third report (at page 3) reported on the steps that it intends to take in order to meet the requirements of subparagraph 1(b) of the Resolution. The CTC would be grateful to receive an outline of the steps and a progress report on the enactment of the following:**

- **Legislation that would bring all banks and other financial institutions under the control of the Government;**
- **Legislation that would comply with the obligations emanating from Nepal's bilateral and multilateral commitments;**
- **Draft Bill on Combating Money Laundering; and**
- **Legislation that would oblige banks and financial institutions to report transactions beyond a particular threshold (page 4 of the third report).**

HMG's response:

Banks and Financial Institutions Ordinance 2004 has been promulgated since February 2004, which brings all commercial banks and financial institutions under the purview of the Government. The provisions of this Ordinance have sought to comply with the obligations emanating from Nepal's bilateral and multilateral commitments for promoting effectiveness in the protection of financial system (especially articles 74, 79 (g and i), 80 and 83).

The deliberations of the draft Bill on Combating Money Laundering among the relevant HMG agencies are underway. The proposed bill seeks to oblige the banks and financial institutions to regularly report on any transactions beyond a threshold amount, including the suspicious ones.

1.2 **Effective implementation of sub-paragraph 1 (b) of the Resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used to carry out terrorist acts. For an act to constitute an offence as described above, it is**

not necessary that the funds actually be used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts which are to be criminalized can be committed even if:

- The only related terrorist act takes place or is intended to take place outside the country;
- No related terrorist act actually occurs or is attempted;
- No transfer of funds from one country to another takes place
- The funds are legal in origin.

Nepal indicates in its supplementary report (at page 4) that in terms of section 3 (1) of the Terrorism and Disruptive Activities Act 2058 (2002), no one can forcibly collect funds including in kind contributions. This provision does not fully meet the requirements of sub-paragraph 1 (b) of the Resolution as it only criminalizes the forcible collection of funds. The CTC would be grateful for an indication from Nepal of steps it intends taking in order also to meet fully the other requirements of this sub-paragraph of the Resolution.

HMG's response

As reported in its third report, the draft bill on combating money laundering seeks to address matters relating to criminalizing the forcible or willful collection of money earned through corruption, drug trafficking, trafficking in persons and arms and ammunition, any other means deemed to be illegal.

1.3 Effective implementation of sub-paragraph 1 (a) of the Resolution requires States to prevent and suppress the financing of terrorist acts. In this context, States are required, *inter alia*, to regulate alternative money remittance services such as *hawala* (Hindi). The CTC would be grateful to know what steps Nepal intends to take in order to regulate this sector and thus to meet fully the requirements of this sub-paragraph of the Resolution.

HMG's response

As Central Bank, Nepal Rastra Bank (NRB) has initiated certain policy measures to ensure lawful remittance services for the lawful earnings of Nepalese nationals abroad. For this NRB has started issuing license to the authorized Nepalese money exchanges to undertake such transactions abroad. Successful cases of this experience are being studied for possible replication as needed.

1.4 **Effective implementation of sub-paragraph 1 (a) of the Resolution requires a State to impose an obligation on banks and financial institutions to detect and report suspicious financial transactions to the relevant authorities. The CTC would be grateful to know of the steps that Nepal intends to take in order to meet fully the requirements of this sub-paragraph of the Resolution.**

HMG's response

The draft bill on combating money laundering intends to incorporate the provision of reporting suspicious financial transactions to the relevant authorities.

Moreover, Section 48 (3) of the Banks and Financial Institutions Ordinance, 2004 provides that a licensed institution must not provide any help to any person who has deposited in a deposit account funds earned by him/her through illegal means to hide, convert, pay or transfer such funds or to hide or lie about the origin or source thereof or to do anything for that purpose, in order to protect him/her from legal actions. In case any licensed institution learns or suspects that any such action has been taken, it must forthwith furnish particulars thereof to the Rastra Bank or to any other agency connected with the task of controlling deflection of currency.

1.5 **Sub-paragraph 1 (c) of the Resolution requires a State to freeze without delay the funds, financial assets or economic resources of individuals and entities, both resident and non-resident, who commit or attempt to commit, or participate in or facilitate the commission of terrorist acts. It should be noted that for this purpose, the funds and other financial resources need not be proceeds of crime, but could be legal in origin and still be used for terrorism either within or outside the territory of Nepal. The CTC would be grateful to know if Nepal can freeze funds linked to terrorism at the request of another State.**

HMG's response

Section 80 (1 and 2) of the Banks and Financial Institutions Ordinance 2004 has the following provision in this regard:

(1) The NRB may direct a licensed institution at any time to freeze any account opened in the concerned licensed institution in the name of any individual, firm, company or institution in such a manner as to prevent the withdrawal or transfer of funds in any way from that account in connection with investigations into any type of crime or in connection with protecting the national interests by checking national or international terrorist activities or organized crimes.

(2) It shall be the duty of the concerned licensed institution to abide by the directives issued by the Rastra Bank under Sub-Section (1).

1.6 **Sub-paragraph 2 (b) of the Resolution requires States to take the necessary steps to prevent the commission of terrorist acts, including by the provision of early warning to other States using exchange of information. The CTC would be grateful to receive the names of States with which Nepal exchanges information by means of early warning of anticipated terrorist activities.**

HMG's response

Nepal is founding member of South Asian Association for Regional Cooperation (SAARC), which comprises India, Bhutan, Bangladesh, the Maldives, Pakistan, Sri Lanka and Nepal. The SAARC Regional Convention on Suppression of Terrorism, 1987 and Its Additional Protocol, 2004 have provisions for exchange of information, intelligence and expertise among its Member States with a view to preventing terrorist activities.

1.7 **Sub-paragraphs 3 (d) and (e) of the Resolution call upon States to become parties to and fully implement the 12 international conventions and protocols relating to terrorism. In its reply to these sub-paragraphs, Nepal indicated in its supplementary report (at page 6) that it is in the process of becoming a party to the International Conventions for the Suppression of Terrorist Bombings and the International Convention for the Suppression of Financing of Terrorism. Nepal further indicated in its third report (at page 5) that it is presently studying the other relevant instruments. The CTC would appreciate receiving a progress report on the ratification of, or accession to the said conventions and protocols to which Nepal is not yet a party, and the**

incorporation of the provisions of the conventions and protocols to which it is already party into its domestic laws.

HMG's response

The administrative procedures for becoming a party to the remaining international instruments on terrorism, including the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of Financing of Terrorism are underway. The Constitution of Nepal provides that accession/ratification of international instruments requires ratification by the Parliament. Therefore, action towards ratification/accession may be possible once the Parliament comes into being.